



SUBDIVISION DESIGN AND IMPROVEMENT STANDARDS VARIANCE APPLICATION

- I. The filing deadline will be Friday, _____, 20____, before 5:00 p.m. Please submit this application to the City of Fort Smith Planning Department, 623 Garrison Avenue, Room 331.
- II. There will be a study meeting of the Planning Commission, Tuesday, _____, 20____, at 11:30 a.m. at the Creekmore Park Community Center. The Planning Commission may need information that is not included on the application. Therefore, the Planning Commission urges all applicants attend the meeting to represent their application.
- III. The Planning Commission meeting will be Tuesday, _____, 20____, at 5:30 p.m. in the Rose Room of the Creekmore Park Community Center. The Planning Commission may need information that is not included on the application. Therefore, the Planning Commission urges all applicants attend the meeting to represent their application.
- IV. A processing fee of \$250.00 shall accompany this application to cover the administrative costs of advertising the public notice and notifying neighboring property owners. **This fee is Non-Refundable.**

IN SOME INSTANCES, THE PLANNING DEPARTMENT STAFF WILL POST A SIGN, LIKE THE ONE SHOWN BELOW, AT THE VARIANCE SITE. IF THE SIGN IS POSTED IT MUST BE LEFT IN PLACE UNTIL REMOVED BY THE PLANNING DEPARTMENT STAFF. THE SIGN WILL BE REMOVED BY THE PLANNING DEPARTMENT STAFF THE DAY FOLLOWING THE BOARD OF ZONING ADJUSTMENT MEETING OR SOON THEREAFTER.



CHECKLIST FOR SUBDIVISION VARIANCE APPLICATION

Applications must be verified for completeness with the applicant before they are accepted.

- ☐ Pre-Application Conference (Pursuant to Section 27-302)
- ☐ Complete Application
- ☐ Legal Description of Subject Property
- ☐ Street Address of Subject Property
- ☐ Existing or Proposed Zoning Classification
- ☐ Uwdf kxukqp'Rævf tcy p'vq'æcrg'tj qy lpi 't tqr qugf 'xct kpeg
- ☐ Copy of Proposed or Approved Development Plan
(if applicable)
- ☐ List the Specific Variance (s) Requested & Undue Hardship
- ☐ Answer Lot Information Questions
- ☐ Complete List of all Property Owners within 300 feet
- ☐ Indicate Whether Restrictive Covenants Apply
- ☐ Owner or Agent Names & Signatures
- ☐ Authorization of Agent (if using an agent)
- ☐ Vicinity, Zoning & Land Use Maps of Subject Property
(Staff will assist applicant in preparing these maps)
- ☐ Application Processing Fee of \$250.00
- ☐ Neighborhood Meeting (Pursuant to Section 27-304 & 27-738*D+

SECTION 27-516—SUBDIVISION APPEALS AND VARIANCES

(A.) In order to insure due process relative to the review of all subdivision and development applications, any person aggrieved by an act of failure to act of the City, as a result of the administration and enforcement of the provisions of any part of these regulations, shall have the right of an appeal to the City Planning Commission. Such right shall be exercised by the applicant filing written notice of the appeal with the Planning Department during normal business hours at least twenty (20) days prior to the next City Planning Commission meeting. Said notice shall clearly indicate the specific section of the regulations that is being appealed. The applicant shall pay an application fee of \$250.00 at the time the written notice (application) is submitted to the City. The applicants shall also supply a list of the names and addresses of all property owners within 300 feet of the subject property as reflected in the county tax assessor's record. The City will notify the list in writing of the appeal request. The Planning Commission shall hold a public hearing on the appeal subsequent to the publication of a notice of the public hearing being made in a newspaper of general circulation. Said notice shall be published at least one time, fifteen (15) days prior to the hearing.

(B.) In considering such appeals, the Planning Commission may, where the literal enforcement of these regulations would result in unnecessary hardship, consider deviations from the strict application of any part of these regulations, wherein its judgment of the public convenience and welfare will be substantially served, the neighboring property will not be substantially injured, and a reasonable development and improvement or property will be permitted. In approving appeals or variances, the Planning Commission may require such conditions as will, in its judgment, secure substantially the objectives of these regulations.

**APPLICATION FOR VARIANCE FROM SUBDIVISION DESIGN
AND IMPROVEMENT STANDARDS**

Owner or Agent Name (*please print*): _____

Street Address or Location: _____

Legal Description of Property (attach separate sheet if necessary): _____

Zoning District: _____

Specific requirement of Section 27-500 of the Unified Development Ordinance which necessitates the subdivision variance request: _____

The specific request is as follows:

Signed:

Owner or Agent Mailing Address

Owner

or

Owner or Agent Phone Number

Agent

Variance # _____

VARIANCE INFORMATION FORM

The following paragraph (Section 27-516 of the Fort Smith Unified Development Ordinance defines the criteria for granting a subdivision variance.

In considering such appeals, the Planning Commission may, where the literal enforcement of these regulations would result in unnecessary hardship, consider deviation from the strict application of any part of these regulations, where in its judgment the public convenience and welfare will be substantially served, the neighboring property will not be substantially injured, and a reasonable development and improvement of property will be permitted. In approving appeals or variances, the Planning Commission may require such conditions as will, in its judgment, secure substantially the objectives of these regulations. (Ord. No. 101-88, art. 3.5, 1-21-89; Ord. N. 6-91, subsection 1, 2-6-91)

1. Describe how the strict enforcement of the Development Regulations causes an undue hardship for your project:

2. List any special circumstances/conditions which exist that have not been created by the owner/applicant and do not apply to other properties in your area:

LIST OF OWNERS OF ALL PROPERTY WITHIN 300 FEET

(Please Type or Print)

The Planning Department is required to give notice (in writing) of this application to all surrounding property owners. List the name and address of the owner of every piece of property within 300 feet of any part of the property. This information may be obtained at the County Assessor’s Office located in the Sebastian County Courthouse - Room 107. Please call the Tax Assessor’s Office at 783-8948 to setup an appointment. (The Planning Department will mail the notices for you.)

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____
12.	_____	_____
13.	_____	_____
14.	_____	_____
15.	_____	_____
16.	_____	_____
17.	_____	_____

AUTHORIZATION OF AGENT

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a subdivision variance by application do hereby authorize _____ to act as our agent in the matter.
(Print name of Agent)

(Type or clearly print)

NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____

This form necessary only when the person representing this request does not own all the property.

Additional Information-Restrictive Covenants

What's the Purpose of Restrictive Covenants?

Restrictions give a development a more standard appearance, and control some of the activities that take place within its boundaries. When enforced, covenants protect property values.

What You'll Always See in Covenants

Restrictive covenants nearly always stipulate the minimum size residence allowed, how many homes may be built on one lot, and what type of construction the homes must (or must not) be.

More Topics You'll See in Restrictive Covenants

- Set backs (how far homes must be from streets and interior lot lines).
- Easements (such as a pathway for power lines or roads).
- Fees for road maintenance or amenities.
- Rules regarding changing or voiding the covenants.
- Rules about pets and other animals (for instance: no breeding for profit, no livestock, and no unchained pets).
- Regulations dealing with in-home businesses and home rentals.
- Rules that limit tree-cutting.
- Clauses that dictate what type of fencing can be used, or that forbid all types of fencing.
- Clauses to reduce clutter on lots, such as prohibiting owners from storing a vehicle that doesn't run within view of others, or parking a recreational vehicle on the property.

Some restrictions limit the paint colors that can be used on a home's exterior. Some might require that all homes have a certain type of siding. In areas where wildfires are a problem, covenants might require you to use only fire retardant building materials.

LETTER REGARDING RESTRICTIVE COVENANTS

Restrictive covenants are regulations that are maintained and enforced by the property owners of the subject subdivision. These covenants may be found in your abstract or at the County Circuit Clerks Office. Restrictive covenants are often enforced in subdivisions with homeowner's associations and can always be more restrictive but never less restrictive than the City of Fort Smith's Zoning Regulations. *(See attached additional information on restrictive covenants)*

TO: Planning Department

SUBJECT: Legal Description of Property

I have searched all applicable records, and to my best knowledge and belief, there are no restrictive covenants running with the above described land, except as follows:

ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

List the names, addresses & telephone numbers of all residents/property owners who attended the meeting.

Meeting Location_____

Meeting Time & Date_____

Meeting Purpose_____

NAME

ADDRESS

PHONE #

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____

27-302 Pre-Application Conference

27-302-1 When Required

A pre-application conference with the Planning and Zoning Department is required for certain development applications, as identified in Table 27-301.1 (Application Procedures) and indicated by the individual application type sections below. The purpose of the meeting is to:

- A. Review the requirements of the Unified Development Ordinance;
- B. Review the requirements of the Fort Smith Comprehensive Plan;
- C. Discuss the nature and design of the proposed development; and
- D. Discuss the development application review and approval process.

27-302-2 Timing The pre-application conference shall be held at least ten (10) days before the submission date unless otherwise specified by the Director. Applications must be submitted within six months of the conference date or a new conference shall be required.

27-302-3 Additional Parties As necessary, the Planning and Zoning Department may include representatives of other departments or agencies at the pre-application conference.

27-303 Application Requirements

27-303-1 Materials

Current development application with submittal requirement instructions is available from the Planning and Zoning Department. Most applications are also available on the City website. All materials submitted in support of a development application become part of the public record and are generally not returned to the applicant(s).

27-303-2 Technical Studies

The Director may require applicants to prepare additional technical studies in support of their applications for rezoning, planned rezoning or special use permits. The cost of the study shall be the applicant's responsibility. If the applicant disagrees with the Director's decision to provide additional technical studies, it may be appealed to the Planning Commission for a final decision. No further action shall be taken to process the development application until the Planning Commission makes a final determination on the appeal.

27-303-3 Deadlines

The Planning and Zoning Department has a list of submission and revision deadlines for the various development applications available at their office. This list is also available on-line at the City's website. Failure to submit a complete or revised application on or before the deadline shall result in the City not placing the application on the scheduled Planning Commission agenda.

27-303-4 Completeness

Within three (3) business days of submittal by the applicant, a member of the Planning Staff shall review the development application to ensure that it is complete.

A. When Complete.

An application is complete when all of the items required by the UDO and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., comprehensive plan amendment) are submitted with the appropriate fees to the Planning and Zoning Department.

B. Return of Incomplete Applications.

Incomplete applications shall be returned to the applicant with a written description of the missing information, defects, or other problems. The Director shall take no further action on incomplete applications. Appeals of this determination are made to the Planning Commission, which is the final decision-making body. No further action shall be taken to process the application until after the Planning Commission's determination. Applications that have been returned to an applicant for revisions shall not be processed until such revisions have been determined to be complete by the Director.

A. Processing Complete Applications.

The applicant will be notified that the application is complete and processed in accordance with this Chapter.

B. Failure to Act.

If the Director fails to act within three (3) business days, the application shall be deemed complete.

C. Revisions Following Determination.

Following a determination of completeness, any further revisions to the application by the applicant without the approval of the Director, or modifications which are contrary to the directions of the Planning Commission or Board of Directors shall void the determination of completeness and trigger a new three (3) day review period. All processing of the application shall stop until a new, complete application has been filed.

D. Determination Not Substantive.

A determination of completeness shall not constitute a determination of compliance with the substantive provisions of the UDO.

27-303-5 Fee Schedule

Application fees shall be set in an amount to recover the costs of processing, publicizing, and reviewing development applications. The Board of Directors shall set the fee schedule, which shall be included as an appendix to this Code. The Board may periodically review and modify the fee schedule based on the cost changes associated with the development application.

27-304 Neighborhood Meeting

27-304-1 When Required

A neighborhood meeting is required for certain development applications, as identified in Table 27-201.1 (Application Procedures) and indicated in the individual application type sections below. When not required, applicants are encouraged by the Board of Directors, Planning Commission and Planning Staff to meet with property owners who may be affected by the proposed development.

27-304-2 Neighborhood Identification

Generally, the neighborhood shall include all parcels located within 300 feet of the boundaries of the parcel proposed for development, and any homeowners association, neighborhood association or merchants association registered with the Planning and Zoning Department and located within 300 feet of the parcel.

27-304-3 Meeting Arrangements

The applicant shall be responsible for providing a meeting location and conducting the meeting at a time and place reasonable to the residents of the neighborhood. Written notice of the location and time of the meeting shall be provided by the applicant to the Planning and Zoning Department and residents of the area defined as the neighborhood at least seven days prior to the meeting. The meeting should also be held at least six days before the planning commission voting meeting.

27-304-4 Meeting Content

At the meeting, the applicant shall present a full and accurate description of the proposed development plans, describe projected impacts of development, describe plans to mitigate or off-set impacts, and facilitate a discussion of neighborhood questions and comments. The Planning Staff shall attend the meeting, but shall not be responsible for organizing the meeting or presenting information about the project.

27-304-5 Meeting Report

Following the neighborhood meeting, the applicant shall provide the Planning and Zoning Department with a mailing list of the people who attended the meeting and a written summary of the discussion and comments. All documents and materials which detail the proceedings of the neighborhood meeting shall become part of the public record for the development application and should be submitted to the Planning and Zoning Department.

27-337-5 Application and Review Procedures

A. Determination of Completeness. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303.

B. Neighborhood Meeting. The applicant shall comply with the requirements for a neighborhood meeting pursuant to Section 27-304 and 27-516.

The Director may waive the requirement for a neighborhood meeting where:

1. The proposed variance shall allow development in compliance with surrounding land uses.

2. The variance request represents a minor change to the development requirements that shall have little or no effect on surrounding properties.

C. Staff Review. Following a Determination of Completeness, the Staff shall review the application pursuant to Section 27-305.

D. Notice and Public Hearing. Following the completion of Staff review and required neighborhood meetings, the application shall be scheduled for a public hearing before the Board of Zoning Adjustment.

1. Notice shall be provided pursuant to Section 27-308.

27-337-6 Action

A Action. Following the public hearing, the Planning Commission may approve, approve as amended, or deny the application for variance.

B Conditions. The Board of Zoning Adjustment may impose conditions on the granting of a variance to insure compliance and to protect adjacent properties.

27-516-7 Appeal of Planning Commission Decisions

Decisions of the Planning Commission in respect to the above shall be subject to appeal by the Board of Directors.